

GAHC010097012018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3013/2018

NATIONAL HEALTH MISSION, ASSAM AND ANR.
REP. BY ITS MISSION DIRECTOR,
SAIKIA COMMERCIAL COMPLEX, NEAR POST OFFICE BUS STAND,
CHRISTIANBASTI, GUWAHATI -5, KAMURP (METRO), ASSAM

2: THE DIRECTOR
FINANCE AND ACCOUNTS

NATIONAL HEALTH MISSION
SAIKIA COMMERCIAL COMPLEX

NEAR POST OFFICE BUS STAND
CHRISTIANBASTI
GUWAHATI-5
KAMRUP (METRO)
ASSAM

VERSUS

THE COMMISSIONER OF INCOME TAX, ASSAM AND 2 ORS.
AAYAKAR BHAWAN,
CHRISTIAN BASTI,
G.S. ROAD,
GUWAHATI - 5, KAMRUP (METRO), ASSAM

2:ASSISTANT COMMERCIAL OF INCOME TAX)TDS- CIRCLE

ROOM NO. 216
AAYAKAR BHAWAN

CHRISTIAN BASTI

G.S. ROAD

GUWAHATI-5 KAMRUP (METRO)
ASSAM

3:M/S GVK EMERGENCY MANAGEMENT
AND RESEARCH INSTITUTE
DEVAR YAMZAL
MEDCHAL ROAD
SECUNDERABAD TELANGANA- 500014

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent : SC, INCOME TAX

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

11.08.2023

The instant writ petition has been filed challenging the order dated 27.03.2018 passed by the Assistant Commissioner of Income Tax (TDS), Guwahati for the financial year 2010-11 whereby an amount of Rs.11,80,08,720/- was assessed to be the TDS liability to be payable by the petitioner.

2. It further appears from the records that pursuant to the said order dated 27.03.2018, the petitioner submitted a request for rectification of the mistake under Section 154 of the Income Tax Act, 1961 before the Assistant Commissioner of Income Tax (TDS), Guwahati.

3. Relevant herein to mention that in the said communication dated 11.04.2018, it was mentioned that there was a mistake apparent on records as regards a sum of Rs.6,84,60,590/- which was being added to the total demand being demanded as per traces and from the website of traces in as much as there exists no such demand for the said assessment year. It was

further mentioned that the said rectification be carried out by reducing the demand of Rs.6,84,60,590/- at the earliest so that the petitioner is in a position to file the appeal within the time allowed under the Income Tax Act, 1961 and 20% of the disputed demand can be paid for granting of the stay of demand.

4. It reveals from the records that this Court vide an order dated 18.05.2018 issued notice and further observed that taking into account the impugned order dated 27.08.2018 issued by the Assistant Commissioner of Income Tax (TDS), Guwahati against the petitioner and during the pendency of the application dated 11.04.2018 filed by the petitioner before the Income Tax Department regarding rectification of the mistake, the operation of the impugned order dated 27.08.2018 was suspended till the returnable date, i.e. on 19.06.2018.

4. It further appears that the interim order was continued from time to time and vide the order dated 25.01.2019, this Court directed the matter to be listed again on 14.02.2019 and the interim order was directed to be continued till then. Thereafter the record shows that the interim order had not been continued.

5. Be that as it may, Mr. S. Chetia, the learned counsel appearing on behalf of the Income Tax Department submitted that on 25.10.2019, the Deputy Commissioner of Income Tax Circle (TDS), Guwahati had rectified the earlier order dated 27.08.2018 in exercise of powers under Section 154 of the Income Tax Act 1961 and thereby the demand of Rs.6,84,60,590/- was reduced and the total payable amount was assessed at Rs.4,95,48,128/-.

It is further relevant to take note of that on the same date, notice was issued to the petitioner, i.e. on 25.10.2019 and the same was duly received on the

same date as could be seen from the acknowledgement issued by the Finance Manager of the State Health Society, Assam. The rectification order, notice as well as the acknowledgement are collectively kept on record and marked with the letter "X".

6. Taking into account the above, more particularly, the communication dated 11.04.2019 wherein the Mission Director, National Health Mission had categorically mentioned that an appeal would be filed after the rectification is done, this Court finds no reason to keep the instant writ petition pending any further in view of the fact that an appeal lies under Section 246 (A) of the Income Tax Act, 1961.

7. This Court also finds it relevant to take note of the submission of Mr. B. Gogoi, the learned counsel for the petitioner who submitted that in view of the pendency of the writ petition, the appeal was not filed.

8. This Court, taking into account the provision of Section 249 (3) of the Income Tax Act, 1961 whereby the Appellate Authority had been conferred with the discretion to condone the delay for sufficient cause for not presenting the appeal observes that if an appeal is preferred by the petitioner within 30 (thirty) days from the date of the instant order, the Commissioner of Appeal shall duly take into consideration that in view of the pendency of the instant writ petition, the petitioner has sufficient cause for not presenting the appeal within the period.

9. With the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant